

Medically Dependent Children Program (MDCP) Medicaid Fair Hearing Preparation Guide*

**Please use our MDCP Fair Hearing Checklist with this guide. It can be found in the resources listed in the (Healthcare) section of our website.*

Central Argument for your child's MDCP case:

The most important question in your child's case is whether he/she has nursing needs on a regular basis that would be provided by a nurse in a nursing facility if he or she had to reside there. MDCP is designed to provide services to help **support** caregivers in the community and **prevent** unnecessary institutionalization of medically dependent children like your child. Further, many children are receiving Medicaid because they meet medical necessity for MDCP. The question is whether your child meets criteria for MDCP, not whether your child's nursing needs are being provided by you in the home. In other words, the question is: does your child meet criteria for a nursing facility at the time of the assessment. It's simple—if your child has a need for nursing on a regular basis (and therefore meets the criteria for admission into a nursing facility), then your child meets the criteria for MDCP.

Before your child's Fair Hearing:

- If you haven't done so already, ask your child's pediatrician or a specialist to draft a letter of medical necessity for the hearing. Also ask your school nurse to write a letter if you think it will help. The letters should explain why your child has a medical need for a nurse on a regular basis. Consider using the samples provided.
- Review the Texas Medicaid and Healthcare Partnership (TMHP) packet sent to you. This is the information TMHP will use during the fair hearing. Review the packet for errors or omissions, particularly the STAR Kids Screening and Assessment Instrument (SK-SAI). Focus on the questions designated as MN-REQ (medical necessity required) because these are the questions that are considered by TMHP in evaluating medical necessity for MDCP. See the STAR Kids Review Fields document provided for the MN-REQ questions.
- Ask Open Records at HHSC (email: openrecordsrequest@hhsc.state.tx.us) for all past MDCP assessments. You will do this to compare approved past assessments with the current assessment, taking note of differences and changes.
- Consider getting recent medical records from your child's pediatrician and other relevant physicians (i.e. neurology, pulmonology, etc., if applicable) to highlight your child's medical diagnoses, medications, and any current medical issues. Include any ER or hospital records if needed.

- If you need more time to prepare for your child’s fair hearing and gather records, fill out the form to ask for a new fair hearing date (you will find this form in the information sent to you by Texas Health and Human Services (THHSC) about the hearing date and time). After you complete the form (write in the blank that you need more time to gather information and prepare for child’s fair hearing; sign and date the form), fax the form to the hearings officer’s office. Follow up with the hearings officer’s office to ensure your request to reschedule your child’s fair hearing was received.

Putting together a hearing packet for your child:

- Try to be organized and neat. Use a cover letter and table of contents if possible (see sample) and number the pages of the completed packet.
- Mail copies of the packet to the hearings officer and the TMHP representative at least 7 days before the fair hearing.
- Consider including the following documents (provided):
 - Brief Waiver Description from the Waiver application the state had to complete for the MDCP waiver
 - Star Kids handbook provisions
 - Texas Occupation Code Definition of Professional Nursing
 - Title 40 Texas Administrative Code 19.2401 (the rule TMHP is going to argue that your child does not meet; this is the same criteria for admission into a nursing facility)
 - Past Assessments you may receive from TMHP, if helpful
 - 2014 DADS Guidance to TMHP Re: Parents legal duties and medical necessity criteria for MDCP
 - Texas Administrative Code rules on fair hearings in case anyone in the hearing needs to be reminded of the hearings officer’s responsibilities, agency responsibilities, the burden of proof, and the appellant’s rights.
- In order to follow along during the fair hearing and stay organized, consider printing out the TMHP packet, any Managed Care Organization (MCO) packet, and your packet, and place them in a 3-ring binder.

Representing your child in the Medicaid Fair Hearing—What to expect and what to do:

- Call into the fair hearing at the scheduled time with the toll-free number and hearing code number you receive from the THHSC hearings office.
- When on the phone, the hearing officer will identify all the participants on the call, explain the hearing procedures, clarify the reason for the hearing, and place everyone under oath.
- TMHP will present their case first (this usually consists of reading a script and portions of the assessment—they don’t really explain the reason for the denial). After TMHP is done with their presentation, you may ask them questions about their decision to deny your child medical necessity for MDCP and the decision making process. Try to ask “yes” and “no” questions only. Please see the

sample cross examination questions. If you have prepared questions, consider rephrasing them so they are essentially a statement of fact followed by, “isn’t that right?” or “correct?” You may choose not to let the TMHP representative talk further and just get to your side of the case.

- After the TMHP presentation, it is your turn to present your child’s case. You may start with a short opening statement to explain MDCP as you understand it (see the brief waiver description in the waiver application excerpt; the provision in the STAR Kids Handbook; and the central argument noted above) and previewing what evidence you plan to present (medical records, letter of medical necessity from the doctor(s), other documents you have in your packet that you want to talk about, your testimony about your child, etc.).
- Talk about the Professional Nursing Definition in the Texas Occupation Code, particularly parts (A) through (C). These are things that are done on a regular basis at home (and maybe also at school) and would be done in a nursing facility if your child didn’t have a program like MDCP that helped them remain in the community. ***It is very important to note that TMHP has been told they should not consider duties a parent is legally required to perform when considering whether individuals have a need for skilled nursing (reference 2014 DADS Guidance to TMHP).***
- Make the point that past assessments were approved with the same or similar medical diagnoses and needs using the same medical necessity criteria as was used for the current assessment. You may choose to point out certain sections of the past assessments that are the same or similar to the current assessment. Focus only on the sections that TMHP utilizes to determine medical necessity. Again, see the STAR Kids Review Fields document provided.
- Highlight and read portions of any letter(s) of medical necessity/support from doctors and nurses. Make the point that the people who provided letters of medical necessity have met and examined your child and understand their needs, unlike the TMHP doctor who made the decision in your child’s case.
- Also talk about the following when presenting your child’s case:
 - Provide a brief medical history for your child so that everyone involved in the fair hearing has a full understanding of your child and his/her needs
 - Describe how your child got on MDCP and how they were approved all the other years
 - Describe the consequences of your child losing MDCP (i.e. lose Medicaid (if this is the case), lose respite, etc.) and how without the program it will be either difficult or impossible to care for your child in the community and how a nursing home placement would be a real and difficult possibility.
- Ask to make a closing statement after you are done presenting your case and all parties have no additional questions for you. You may include the following in a closing statement:
 - TMHP didn’t prove their case as required by law—they just read portions of the assessment in the record and did not explain the reason for the denial.

- Summarize why TMHP is wrong in their denial decision—Highlight the evidence you presented about the nursing needs your child has that you perform every day and would be performed by a nurse or supervised by a nurse if your child was in a nursing facility (medication administration; assessment, interventions, evaluation for various medical issues (seizures, constipation, etc.) or PRN (as needed) medication(s), etc.).
- Ask the hearings officer to rule in your child’s favor because TMHP is incorrect and your child clearly has nursing needs on a regular basis and MDCP helps support you in caring for your child in the community.
- DO NOT let TMHP bring in new reasons for denying your child medical necessity for MDCP—if you catch this, tell the hearing officer that it is against the law for an agency to bring up new reasons for a denial during the fair hearing or to reference documentation not presented before the fair hearing—point out that TMHP is well aware of this rule.
- At the end of the fair hearing the hearings officer will usually state a deadline for their decision. It is typically 30-45 days after the fair hearing. However, the hearing decision may be mailed before or after this stated deadline. If you were waiting on the receipt of documents that you may have addressed in your testimony, ask that the fair hearing record be kept open, so you can submit those documents to the fair hearings officer.

Disability Rights Texas strives to update its materials on an annual basis, and this handout is based upon the law at the time it was written. The law changes frequently and is subject to various interpretations by different courts. Future changes in the law may make some information in this handout inaccurate.

This handout is available in large print, Braille and/or on audio tape upon request.

The handout is not intended to and does not replace an attorney’s advice or assistance based on your particular situation.

###